IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3418 of 1980

with

SPECIAL CIVIL APPLICATION Nos 3419 of 1980, 3420 OF 1980, 3421 OF 1980, 3508 of 1980, 3605 of 1980, 3606 of 1980, 1226 of 1983 and 1227 of 1983.

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SHREE BHAGVATACHARYA NARAYANCHARYA PUBLIC TRUST
Versus
STATE OF GUJARAT

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Appearance:

MR PV NANAVATI for Petitioner in SCA No. 3418/80.
MR S.N. SHELAT, ADDL. ADVOCATE GENERAL WITH
MR A.D. OZA, GOVERNMENT PLEADER for Respondents.

MR JITENDRA M PATEL
for Petitioners in SCA Nos. 3419/80, 3420/80, 3421/80, 1226/83 and 1227/83.
MR S.N. SHELAT, ADDL. ADVOCATE GENERAL WITH
MR A.D. OZA, GOVERNMENT PLEADER for Respondents.

MR A.K. CLERK in Spl. C.A No. 3508/80 for the petitioner
MR S.N. SHELAT, ADDL. ADVOCATE GENERAL WITH
MR A.D. OZA, GOVERNMENT PLEADER for Respondents.

MR D.D.VYAS, Sr. Counsel with Mr. S.K. Bukhari for Mr. M.I. Patel for petitioners in SCA Nos. 3605/80 and 3606/80.

MR S.N. SHELAT, ADDL. ADVOCATE GENERAL WITH
MR A.D. OZA, GOVERNMENT PLEADER for Respondents

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CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE B.C.PATEL
and
MR.JUSTICE R.K.ABICHANDANI

Date of decision: 01/02/2001

JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

These matters were ordered to be referred By the Division Bench to a larger Bench for its decision, considering the nature of the controversy and the importance of the questions involved in them.

2. The following are the questions formulated by the Division Bench:-

"(a) Whether Article 26(c) of the Constitution of India, which confers fundamental right to own and acquire movable and immovable property to every religious denomination or any section thereof, forms part of the basic structure of the Constitution?

(b)(i) Whether Gujarat Devasthan Inams Abolition (Amendment) Act, 1977 is open to challenge, as

the said Act is placed in the Ninth Schedule?

(ii) If a statute does not provide for compensation for abolition of rights and is placed in the Ninth Schedule, whether the said Act would be void or whether the validity of the said statute cannot be challenged as provided in Article 31B?

(iii) What is the effect of Article 300A of the Constitution which does not provide for compensation for abolition of rights over the property, as it only provides that no person can be deprived of his property save by authority of law?

(c) Even if it is open to challenge, whether Section 9 of the Gujarat Devasthan Inams Abolition Act, 1969 provides for compensation for abolition of rights of inamdar which are extinguished as per the provisions of Section 8 of the Gujarat Devasthan Inams Abolition Act, 1969?

(d) Whether the decision rendered by the Division Bench of this Court in the case of Narendraprasadji Maharaj Vs. State, 13 G.L.R. 404, requires reconsideration?

2.1 Though the said Act has been repealed by the Gujarat Repealing Act, 2000 on 31.3.2000 by considering it to have become obsolete, these matters have been argued on the footing that the rights and liabilities accrued or arising thereunder are saved and can be agitated in context of its currency period.

3. In Special Civil Application Nos. 3418/80, 3605/80, 3606/80, 1226/83 and 1227/83, the petitioners seek a declaration that all the provisions of the Gujarat Devasthan Inams Abolition Act, 1969, more particularly Section 8 thereof, as well as the provisions of the said Amendment Act of 1977 are void and unconstitutional. They have challenged the action of the authorities of refusing to compensate the inamdars separately for the rights extinguished under Section 8 of the said Act.

3.1 In Special Civil Application Nos. 3419/80, 3420/80, 3421/80 and 3508/80, the petitioners have sought a declaration that Section 8 of the said Act and the said Amendment Act, by which Section 11 was amended are ultra-vires and unconstitutional and a further declaration that Sections 2, 6 and 7 of the Constitution

Fortyfourth Amendment Act, 1978 are ultra-vires and void. They also have claimed to be separately compensated in respect of their rights extinguished under Section 8 of the Act.

3.2 According to the petitioners who were Inamdars, by the provisions of the said Act, all their rights in Devasthan Inam villages/lands were extinguished along with the other incidents of the Inam. Their right to hold the inam lands without payment of land revenue to the Government was also extinguished. By Section 8 of the said Act, their rights in the things specified therein, in particular in respect of all the mineral wealth, quarries, forest products, trees etc. were also extinguished. The Act also took away their right to own agricultural lands which were in possession of their tenants by virtue of inserting new Section 88E in the Bombay Tenancy Act. According to the petitioners, all this was done without providing for payment of compensation in its true sense and without laying down the relevant principles for award of compensation. It is their case that while upholding the Constitutional validity of the said Act, a Division Bench of this Court, in Narendraprasadji Anandprasadji Maharaj Vs. The State of Gujarat and others, reported in 13 GLR at page 404, had held that the Act provided for compensation for abolition of all the rights of the Inamdar in the inam as well as inam lands. Emphasis was laid on the fact that the Constitutional validity of the provisions was upheld on the basis that the said Act provided for compensation for the Devasthan lands which could be claimed separately by the Inamdars under Section 11 in respect of their rights extinguished under Section 8 of the Act. According to the petitioners, the Supreme Court has upheld the said decision and its reasoning in Narendraprasadji Vs. State of Gujarat, reported in AIR 1974 SC 2098. The grievance of the petitioners is that after a lapse of about seven years, the respondent State amended the said Act by the Amendment Act 27 of 1977 by expressly excluding an Inamdar from applying for compensation under Section 11(1) and by providing in sub-section (4) of Section 11, that nothing in Section 11(1), as it stood prior to amendment, shall be deemed ever to have entitled an inamdar to claim any compensation under the said Section for the abolition, extinguishment or modification of any of his rights to, or interest in property, notwithstanding anything contained in any judgement, decree or order of any Court. According to the petitioners, in view of the provisions of the said Amendment Act, their right to hold, acquire and dispose of property has been adversely affected

inasmuch as under Section 8 of the Act, though certain properties of the Inamdar have automatically vested in the State Government, the Inamdar will not be entitled to claim any compensation in respect thereof. It is alleged that by the Amendment Act the substance of the petitioners fundamental rights under Articles 25 and 26 is destroyed, and their property is expropriated without payment of any compensation. These provisions are therefore challenged on the ground that they violate the fundamental rights guaranteed under Art. 19(1)(f) and 31 as they stood when the Act was enacted. It is also their case that the provisions of the Act violate Art. 26(c) and 300-A of the Constitution by excluding an Inamdar from claiming compensation under Section 11 of the Act. According to them, the provisions of the Act are not protected under Article 31A of the Constitution of India.

4. Admittedly the Inamdars had earlier challenged the Constitutionality of the said Act as it stood prior to its amendment on the ground that the provisions thereof infringed the fundamental rights guaranteed by Articles 14, 19(1)(f) 26(c) and 31 of the Constitution of India. The Court, negativing their challenge, held that under the provisions of the said Act, substance of the right of property was not impaired and one form of property was substituted for another and that what was substituted was reasonable. It was held that Sections 5, 6, 7 and 8 of the Act did not violate Article 26(c) of the Constitution. It was also held that the Inamdar was paid the annual average assessment in prepetuity as compensation for abolition of its rights under the Devasthan inam tenure under Section 5. So far as the extinguishment of his right in uncultivated land in his possession and other specific kind of property which included trees, mines, minerals and quarries under Section 8 was concerned, the Inamdar was entitled to compensation under Section 11. The Court held that these provisions of the said Act did not violate Article 31(2) of the Constitution because compensation provided by the Act was based on proper and relevant principles so as to satisfy the Constitutional guarantee under Article 31(2). It was also held that so far as agricultural lands and waste or uncultivated lands situate in rural areas were concerned, the Act was clearly a measure of agrarian reform and was protected by Article 31-A from challenge under Article 31(2). It was held that the interpretation which the Court was placing on Sections 9 and 11 (1) made a consistent and intelligible scheme of compensation which was not only just and rational but was also in line with the policy underlying the earlier Tenure Abolition Acts. In paragraph 18 of the judgement, it held that the

provision for compensation in Section 9 was clearly limited to abolition of the rights of the Inamdar in Devasthan Inam Tenure under Section 5 and did not extend to extinguishment of the right of the Inamdar in the specific Devasthan land falling within Section 8. The extinguishment of the rights of the Inamdar in the specific Devasthan land covered by Section 8 was held to be not arising by reason of the abolition of the rights of the Inamdar in Devasthan Inam but by reason of operation of Section 8. It was held that compensation for such extinguishment was provided for in Section 11, which was a residuary Section for compensation. The Court held that if any Indamdar claims compensation not for the abolition of his rights under the Devasthan inam tenure which are abolished by Section 5 but for extinguishment of his right in specific Devasthan lands by reason of operation of Section 8, his claim would fall within Section 11(1) and not within Section 9. The petitions were dismissed by the Court and the decision came to be challenged before the Supreme Court.

4.1 The Supreme Court in Narendraprasadji Vs. State of Gujarat (supra) held that the said Act did not violate Art. 26(c) of the Constitution on the ground that it deprives the religious denominations of their ownership of the property. It was also held that the Act, in so far as it was concerned with the compulsory acquisition of property, fulfilled all the requirements of Article 31(2) of the Constitution. It was further held that bearing in mind the object of the Act, and of the various provisions enacted in furtherance of agrarian reform, the Act was squarely protected under the saving provision of Article 31A. The Court held that it cannot be held that the right under Arti. 26(c) was an absolute and unqualified right to the extent that no agrarian reform can touch upon the lands owned by the religious denominations. Right guaranteed under Article 26(c) not being absolute and unqualified, was consistent with reasonable regulations made by the State provided the substance of the freedom was not affected. The Act did not make any inroad in such a way to affect directly the substance of that freedom. It was held that the objection on the score of adequacy of compensation cannot be agitated against a legislation which admittedly related to agrarian reform and was therefore, under the canopy of protection of Article 31A of the Constitution and objection on the score of violation of Article 14, 19 and 31 was not entertainable. It will be noted from para 22 of that judgement that the contentions were raised in context of the Constitutional validity of the Act only on the ground that the provisions violated Article 26(c) and

were not saved under Article 31A of the Constitution. The appellants obviously did not raise any question in respect of the requirement of Article 31(2). The question whether compensation was separately payable to the Inamdar under Sec. 11 of the Act in respect of his rights extinguished under Section 8 or whether Section 9 provided for compensation in respect of all the extinguished rights of an Inamdar, including the rights extinguished under Section 8, was never put in issue before Hon'ble the Supreme Court.

5. The learned Counsel who appeared for the petitioners contended before us that the basis on which the validity of the Act was upheld in context of the provisions of Article 31(2) of the Constitution was removed by the Amendment Act and that since by virtue of the amendment, inamdar ceases to be entitled to claim compensation, in respect of the rights which were extinguished under Section 8, by resorting to Section 11, the Act becomes violative of Article 31(2) of the Constitution. It is submitted that when the Amendment Act was brought into force, Article 31 was operative. Therefore, the validity of the provisions of the said Act as amended was required to be judged on the anvil of the provisions of Article 31 notwithstanding the fact that subsequently it came to be omitted with effect from 20-6-1979, or that the said Act as well as the Amendment Act came to be included in the Ninth Schedule to the Constitution by the Constitution Sixtysixth Amendment Act, 1990 with effect from 7th June, 1990. It was also contended that by excluding the inamdar from claiming any compensation in respect of the extinguishment of his right over the properties enumerated in Section 8 and by enabling the persons other than inamdars, whose rights may be established in respect of such properties to claim compensation under Section 11, the provisions of the said Act create a hostile discrimination against the inamdars and therefore violate Article 14 of the Constitution. It is submitted that though the said Act and the Amendment Act have been placed in the Ninth Schedule, they are open to challenge on the ground that they violate the basic features of the Constitution by depriving the inamdars of their fundamental rights guaranteed under Article 14, 26(c) and 31 of the Constitution. It was also contended that the Act and the Amendment Act were violative of the provisions of Article 300A of the Constitution by adversely affecting the petitioners Constitutional right to property without providing for an adequate compensation. It was contended that the State legislature had no legislative competence to make any law acquiring property under Entry 42 of the Concurrent List

in the Seventh Schedule to the Constitution, without providing for payment of adequate compensation.

5.1 In support of their contentions, the learned Counsel appearing for the petitioners placed reliance on the following decisions:-

1. The decision of the Supreme Court in Deepchand Vs. State of U.P, reported in AIR 1959 SC 648 and Mahendra Lal Vs. State of UP, reported in AIR 1963 SC 1019 were cited for their proposition that the prohibition under Article 13(2) goes to the root of the matter and limits the State's powers to make law and that the law made inspite of the prohibition is a still-born law. Such a law is dead from the beginning and there can be no question of its revival under the doctrine of eclipse.

2. State of Maharasthra Vs. Kamal S. Durgule, reported in (1985) 1 SCC 234 was cited for its proposition that if an Act is initially unconstitutional, being violative of fundamental rights, its invalidity cannot be cured by framing Rules for removing the infirmities from which the Act was suffering. In that case the Maharashtra Vacant Lands (Prohibition of Unauthorised Occupation and Summary Eviction) was held to be violative of Article 14 and 19(1)(f) of the Constitution. It was held that the unconstitutionality of the Act was not cured by framing of the Maharashtra Vacant Lands (Prohibition of Unauthorised Occupation and Summary Eviction) (Service of Notice) Rules, 1979.

3. The decision in Kesavananda Bharati Vs. State of Kerala, reported in AIR 1973 SC 1461 was referred to for the proposition that by a Constitutional Amendment, the basic structure and frame work of the Constitution cannot be altered. The decision in Minerva Mills Ltd. Vs. Union of India, reported in AIR 1980 S.C 1789, was also cited for the same proposition that Article 368 of the Constitution does not enable Parliament to alter the basic structure or frame-work of the Constitution.

4. The decision in S.R. Bommai Vs. UOI reported in AIR 1994 SC 1918 was cited to point out that

seculiarism has been held to be the basic feature of the Constitution.

5. The decision in State of Bihar & anr. Vs. Bal Mukund Sah and ors., reported in (2000) 4 SCC 640 was cited to point out that it was held by the Supreme Court that separation of powers and independence of judiciary form part of basic structure of Constitution.

6. The decisions in Vajravelu Vs. Spl. Deputy Collector, reported in AIR 1965 SC 1017 and Kochunni Vs. State of Madras and Kerala, reported in AIR 1960 SC 1080 were cited for the proposition that Art. 31A will apply only to a law made for acquisition by the State of any "estate" or any rights therein or for extinguishment or modification of such rights if such acquisition, extinguishment or modification is connected with agrarian reform.

7. The decision of the Calcutta High Court in Lakshmimoni Das Vs. State, reported in AIR 1987 Calcutta 326 was cited to show that Calcutta Thika Tenancy (Acquisition and Regulation) Act was held to be not protected under Article 31-C of the Constitution and it was found on scrutiny of its provision that the Act was not enacted to give effect to the provisions of Articles 39(b) and (c) of the Constitution and was open to challenge on the score of violation of Part III of the Constitution.

8. The decision in Waman Rao Vs. UOI, reported in AIR 1981 SC 271 was cited for its proposition that all amendments to the Constitution made after 24th April, 1973 when Keshavananda Bharati (supra) was decided, which were in the Ninth Schedule to the Constitution, were open to challenge on the ground that they were beyond the constituent power of the Parliament since they damage the basic and essential features of the Constitution or its basic structure. It was held in that decision that if any Act or Regulation included in the Ninth Schedule by Constitutional Amendment made on or after 24th April, 1973, is saved by Article 31-A or by Art. 31-C as it stood prior to its amendment by the Fortysecond Amendment, the challenge to the validity of the relevant Constitutional Amendment by which that Act or Regulation is put in the Ninth Schedule,

on the ground that the Amendment damages or destroys a basic or essential feature of the Constitution or its basic structure as reflected in Articles 14, 19 or 31, will become otiose.

9. The decision in Smt. Indira Gandhi Vs. Raj Narain reported in AIR 1975 SC 2299 was cited for the proposition that it is not permissible by amendment of the Constitution to change the basic structure of the Constitution. That decision was rendered in context of the Election Laws.

6. The learned Additional Advocate General appearing for the respondents contended that the validity of the said Act was upheld by the Supreme Court in Narendraprasadji Vs. State of Gujarat, reported in AIR 1974 SC 2098, in which it was held that the right guaranteed by Article 26(c) to own and acquire movable and immovable property for managing religious affairs cannot take away the right of the State to compulsorily acquire property in accordance with the provisions of Article 31(2) of the Constitution. It was argued that as held by the Supreme Court, when property is acquired by the State in accordance with law, and with the provisions of Article 31(2), and the acquisition cannot be assailed on any valid ground open to the person concerned, be it religious institution, the right to own the property vanishes as that right is transferred to the State. Thereafter, there is no question of any right to own the particular property, subject to public order, morality and health and Article 26 will in the circumstances be of no relevance. It was also pointed out that the Supreme Court has in the context of the said Act held that its provisions were enacted in furtherance of agrarian reform, and that the Act is squarely protected under the saving provision of Art. 31-A. It was therefore contended that it is not open to the petitioners to once again challenge the provisions of the Act on the ground that they violate the fundamental rights guaranteed by Article 26(c) of the Constitution. It was further argued that right to property was not a basic feature of the Constitution and therefore, even if the right under Article 26(c) of the Constitution was affected by the said Act, it cannot be said that any basic feature of the Constitution was changed. It was contended that under Article 31-B, the Acts placed in Schedule Nine are immuned from any challenge on the ground of inconsistency with any of the fundamental rights. The learned Counsel also argued that the said Act and the Amendment Act both

were protected even by provisions of Article 31-C of the Constitution and therefore, could not be challenged on the ground of any inconsistency with the fundamental rights contained under Article 14,19 and 31 of the Constitution. It was further argued that there was no discrimination made between the Inamdars and the provisions were applicable equally amongst equals. Therefore, there was no violation of Article 14 of the Constitution. The learned Counsel also argued that the question as to whether compensation was payable to the inamdar under Section 11 over and above the compensation payable to him under Section 9 was never put in issue before the Supreme Court. Relying upon the decision of the Supreme Court in Kunhayammed Vs. State of Kerala, reported in (2000) 6 SCC 359 , he pointed out that it was held by the Supreme Court that the doctrine of merger was not a universal or unlimited application and that it will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid, shall be determinative of the applicability of the doctrine of merger, which was relied upon on behalf of the petitioners to contend that it was not open for the larger Bench to reconsider even the aspect of head of compensation which was never put in issue before the Supreme Court in the Appeal.

7. The said Act was enacted with a view to abolish inams held by religious or charitable institutions and to provide for matters consequential and incidental thereto. It came into force from 15th November, 1969. The relevant provisions of the Act as well as the Amendment Act of 1977 which fall for our consideration read as under:-

2. In this Act, unless the context otherwise requires,--

(6) "Devasthan inam" means an inam consisting of a grant or recognition as a grant--

(a) of a village, portion of a village or land, whether such grant be --

(i) of soil with or without exemption from payment of land revenue, or

(ii) xxx xxxx

(7) "Devasthan land" means a village, portion of a village or land held under a Devasthan inam;

(10) "inamdar" means the religious or charitable institution for which a Devasthan inam is held, whether such inam is actually entered in the relevant revenue record in the name of such institution or of any person in charge of such institution or having the management thereof;

5. Notwithstanding any usage or custom, settlement, grant, agreement, sanad or order or anything contained in any decree or order of a court or any law for the time being applicable to any Devasthan inam, with effect on and from the appointed day --

(a) all Devasthan inams except in so far as they consist of a grant or recognition as a grant of cash allowance or allowance in kind shall be and are hereby abolished;

(b) save as expressly provided by or under this Act, all rights legally subsisting immediately before the said day, in the Devasthan inams so abolished and all other incidents of such inams shall be and are hereby extinguished; and

(c) subject to the oother provisions of this Act, all Devasthan lands shall be and are hereby made liable to the payment of land revenue in accordance with the provisions of the Code and the rules made thereunder, and accordingly the provisions therein relating to unalienated land shall apply to all Devasthan lands.

6. In the case of a Devasthan land, the person deemed to be the occupant primarily liable to the State Government for payment of land revenue in respect of such land in accordance with the provisions of the Code and the rules made thereunder shall be, --

(a) where such land is in possession of the inamdar and had been cultivated on behalf of the inamdar immediately before the appointed day, the inamdar,

(b) where such land is in the possession of an authorised holder or an inferior holder, such authorised holder or inferior holder, as the case may be, and

(c) where such land is in possession of a person other than the inamdar, authorised holder, unauthorised holder or inferior holder, the inamdar.

7. (1) Where any Devasthan land is in the possession of an unauthorised holder, it shall be resumed and such unauthorised holder shall be summarily evicted therefrom by the Collector in accordance with the provisions of the Code:

xxx xxxxx

8. All public roads, lanes and paths, the bridges, ditches, dikes and fences, on or beside the same, beds of creeks below high water mark, and beds of rivers, streams and nallas, lakes, wells, tanks, canals and water courses, and all standing and flowing water, and all lands (excluding lands used for building or other non-agricultural purposes) in respect of which no person is deemed to be an occupant under this Act, and all mines whether being worked or not and minerals, whether discovered or not and all quarries, which are situated within the limits of any Devasthan land shall, except in so far as any rights of any person other than the inamdar may be established in or over the same and except as may otherwise be provided by any law for the time being in force, vest in, and shall be deemed to be with all rights in or over the same or appertaining thereto the property of the State Government and all rights held by an inamdar in such property shall be deemed to have been extinguished and it shall be lawful for the Collector, subject to the general or special orders of the State Government, to dispose of them as he deems fit, subject always to the rights of way and other rights of the public or of individuals legally subsisting.

9. In the case of a Devasthan inam not consisting of a grant or recognition as a grant of cash allowance or allowance in kind, there shall be paid to the inamdar as compensation for the abolition of all his rights in Devasthan inam, in the form of an annuity in perpetuity,--

(a) a sum of money equal to an average of the full assessment lawfully leviable on all the lands comprised in such inam during a period of three years immediately preceding the appointed day if the grant consisted of grant of soil with or without exemption from payment of land revenue,

(b) a sum of money equal to an average of the amount of land revenue or, as the case may be, the share in such land revenue received or due to the inamdar during a period of three years immediately preceding the appointed day, if the grant consisted of assignment of land revenue or a share in such land revenue.

10. (1) Any inamdar entitled to compensation under Section 9 shall within the prescribed period apply in writing to the Collector for determining the amount of compensation payable to him, under the said Section.

(2) On receipt of an application under sub-section (1) the Collector shall after making formal inquiry in the manner provided by the Code make in such form as may be prescribed an award determining the amount of compensation.

11. (1) [If any person other than an inamdar] is aggrieved by the provisions of this Act as abolishing, extinguishing or modifying any of his rights to or interest in, property and if compensation for such abolition, extinguishment or modification has not been provided for in the other provisions of this Act, such person may apply to the Collector for compensation.

Note:- The words underlined shall be and shall be deemed always to have been substituted for the words "If any person" by Gujarat Act 27 of 1977.

8. It has been contended that the religious denominations have a fundamental right under Article 26(c) to own and acquire movable and immovable properties. The provision of Section 8 of the Act is assailed on the ground that while all rights held by an inamdar in the properties mentioned therein which are situate within the limits of any Devasthan land, are deemed to have been extinguished, the right of any person other than the inamdar established in or over the same are not so extinguished. Taking away of such rights of the inamdar in respect of properties that vest in the State Government under Section 8 would have the effect of denying the religious denominations, i.e. the inamdar's fundamental right to own property as guaranteed by Art. 26(c). Moreover, treating an inamdar and a person other than inamdar on a different footing in respect of the extinguishment of their rights under Section 8 was discriminatory and violative of Article 14. An inamdar

is treated with hostile discrimination to the extent to which certain rights of person other than inamdar are not extinguished while all the rights of inamdar over similar property are extinguished under Section 8. Section 11 of the Act as amended by the Amendment Act of 1977 is also challenged to the extent that it keeps out the inamdar from claiming compensation. It is the case of the petitioners that taking away the fundamental right under Article 26(c) constitutes a dent in the basic structure of the Constitution, because, without right to property guaranteed by Article 26(c) the religious denominations cannot effectively exercise their freedom to manage their religious affairs.

9. Section 9 of the said Act provides for compensation to the inamdar for abolition of all his rights in the Devasthan inam which as defined under Section 2(6), inter-alia, means an inam consisting of a grant or recognition as a grant of a village, portion of a village or land. Such village portion of a village, or land held under a Devasthan inam is Devasthan land as defined in Section 2(7). All Devasthan inams (except in so far as they consist of a grant or recognition as a grant of cash allowance or allowance in kind) were abolished and all the rights in them and other incidents of such inams were extinguished and the Devasthan lands were made liable to payment of land revenue in accordance with the provisions of the Bombay Land Revenue Code, as provided by Section 5 of the Act. Thus, the inams consisting of a grant or recognition of a grant of a village, portion of village or land and their incidents came to be abolished while the inams consisting of grant of cash allowance or allowance in kind were not affected. The occupancy rights in respect of Devasthan land, the inam of which was abolished are dealt with by Sec. 6 and the inamdar will be the person deemed to be the occupant primarily liable for the payment of land revenue. Section 6 identifies who shall be the person deemed to be the occupant primarily liable to the State Government for payment of land revenue in respect of Devasthan land and provides that it shall be the inamdar who shall be liable to pay land revenue where the land is in his possession and he is cultivating it or where such land is in possession of a person other than the inamdar, authorised holder, unauthorised holder or inferior holder. In case where such land is in possession of an authorised holder or inferior holder, then such holder would be deemed to be the occupant so primarily liable to pay land revenue. Thus, where unauthorised holder (as defined in Section 2(14)) is not in possession of the land, the liability to pay land revenue will remain on the inamdar as a person

who is deemed to be the occupant. In cases where Devasthan land is in possession of an unauthorised holder, it shall be resumed by the Collector under Section 7 of the Act.

9.1 Section 8 provides that all public roads, lanes, paths etc. situated in Devasthan land shall vest in and be deemed to be the property of the State Government. These include all lands (excluding lands used for building or non-agricultural purpose) in respect of which no person is deemed to be an occupant under the Act and also all mines situated within the Devasthan land. Rights of any person other than the inamdar as may be established in or over the property are excepted. The rights vest in the State Government under Section 8 except as may otherwise be provided by any law in force, and all rights held by the inamdar vesting in the enumerated property are deemed to be extinguished.

9.2 The provisions for compensation required to be paid to the inamdar contained in Section 9 are in respect of "the abolition of all his rights in the Devasthan inam", which will include the inam consisting of a grant of land which is abolished. The compensation is to be paid in form of the an annuity in perpetuity. It is therefore not a one time payment. The compensation will consist of "money equal to an average of the full assessment lawfully leviable on all the lands comprised in such inam during a period of three years immediately preceding the appointed day if the grant consisted of soil with or without exemption from payment of land revenue. When a provision made in Section 9 for compensation was intended to take care of "abolition of all rights", in the Devasthan inam, it obviously included compensation payable for the extinguishment of all the rights held by an inamdar in the property deemed to have vested in the State Government under Section 8. The provisions of Sections 8, 9 and 10 have not been amended and these provisions coupled with Rule 3 of the Gujarat Devasthan Inams Abolition Rules, 1970, which provides for making of an application for compensation under Section 10, and prescribes the application Form "A" in which details of the entire Devasthan land held for which compensation is claimed by the inamdar are to be given by him, constitute a complete set of provisions dealing with the entire question of compensation for all the extinguished rights of the inamdar. Save as expressly provided by or under the Act, all rights legally subsisting in the Devasthan inams which are abolished and all other incidents of such inams are extinguished under (b) of Section 5. All rights held by an inamdar in the

property described in Section 8, which includes all lands in respect of which no person is deemed to be an occupant under the Act as envisaged under Section 6, shall be deemed to have been extinguished. The rights in Devasthan inam would be the rights in respect of a grant of the nature which is covered by the definition of Devasthan inam in Section 2(6), which includes grant of land. Such land held under the Devasthan inam would be Devasthan land. Therefore, there is no valid basis for excluding rights relating to Devasthan land which are deemed to be extinguished under Section 8 from the expression "all his rights in Devasthan land" occurring under Section 9 of the Act. It is therefore difficult to subscribe to the view of the Division Bench in Narendraprasadji Vs. State reported in 13 GLR 404, that so far the extinguishment of the inamdar's right in the property included in Section 8 is concerned the inamdar is entitled to compensation under Section 11 of the Act. In our opinion, Section 9 takes care of all the extinguished rights of the inamdar while Section 11 is meant to provide for compensation for abolition of rights of other persons. The Amendment in Section 11 is only of a clarificatory nature and the intention of the legislature was even reflected earlier from the margin note of Section 11, which read "Method of awarding compensation for abolition etc., of rights of other person in property."

9.3 It was argued that since the validity of the Act was upheld by the High Court in Narendraprasadji's case because of the interpretation that was placed on the provisions of Section 11, which was construed so as to enable the inamdar to claim compensation separately under it in respect of his rights deemed to have been extinguished over the properties specified in Section 8, and that decision was confirmed by the Supreme Court, this Court cannot go behind the interpretation given to the provisions of Section 11 by the High Court, because, on the doctrine of merger it became the decision of the Supreme Court. In other words, this Court cannot reconsider the view taken by the Division Bench on the interpretation of Section 11 and hold that the inamdar was excluded from the ambit of Section 11. The fallacy in this argument is obvious. The question whether the inamdar could claim compensation separately under Section 11 in respect of his rights extinguished under Section 8 over and above the compensation provided for extinguishment of all his rights under Section 9 read with Section 10 was never put in issue before the Supreme Court. The appeal against the decision of the High Court was filed by the inamdars and it was preferred only

against that part of the decision which had gone against the inamdars on the question of the constitutionality of the statute. The High Court had held that the right to property conferred by Article 26(c) on a religious denomination was not an absolute right and that there was no infringement of the substance of the right to property and that Sections, 5, 6, 7 and 8 of the Act did not violate Article 26(c). It was also held that these provisions did not violate Article 31(2), because, so far as agricultural lands or uncultivated lands in rural areas are concerned, the Act was clearly a measure of agrarian reforms and was protected by Article 31-A from the challenge. It was also held that the Act provided for compensation based on proper and relevant principles so as to satisfy the Constitutional guarantee under Article 31(2). The Supreme Court upheld the constitutional validity of the Act holding that the Act and its provisions did not violate Article 26(c), and that, bearing in mind the object of the Act, they were squarely protected under the saving provisions of Article 31-A. It was also held that it cannot be said that the right under Article 26(c) is an absolute and unqualified right to the extent that no agrarian reform can touch upon the lands owned by the religious denominations. The Court held: "One thing is however clear that Article 26 guarantees, inter-alia, the right to own and acquire movable and immovable property for managing religious affairs. This right, however, cannot take away the right of the State to compulsorily acquire property in accordance with the provisions of Article 31(2)." It was also held that the object on the score of adequacy of compensation cannot be agitated against the legislation which admittedly relates to agrarian reforms and therefore, is under the canopy of Article 31-A and that objection on the score of violation of Articles 14, 19 or 31 was not entertainable. The contentions raised for the appellants as set out in paragraph 22 of the judgement of the Supreme Court clearly show that the argument was that though the Act fulfils the requirement of Article 31(2) it has to fulfil, in addition, the requirements of Article 26(c) also and that the Act was not saved by the provisions of Article 31-A. Thus, there was no contention raised before the Supreme Court whether compensation was payable to the inamdar only under Section 9 for all his extinguished rights or whether he could separately claim compensation also under Section 11 for the rights extinguished by Section 8. Reliance on the doctrine of merger placed on behalf of the petitioners is therefore misconceived in context of the point that never was carried to the Supreme Court.

9.4 It will be noticed that the question regarding payment of compensation was relevant at the time when the matter was decided by the High Court in context of Article 31(2). Article 31 was omitted by the Fortyfourth Amendment Act, 1978 with effect from 20.6.1979. Sub-clause (f) of Clause (1) of Article 19 which guaranteed the right to acquire and hold property was also omitted by the same Forthfourth Amendment Act, 1978. Since we are of the view that there is already a provision for compensation in Section 9 of the said Act in respect of all the extinguished rights of an inamdar, the challenge on the ground of violation of fundamental rights under Article 31(2) as it stood before its omission would be misconceived, even if it is considered without reference to the provisions of Articles 31-A, 31-B and 31-C of the Constitution.

10. It will be noticed from the decision of the Supreme Court as well as the decision of the High Court in Narendraprasadji's case (supra) that the validity of the said Act was upheld on the ground that the extinguishment of any rights in any "estate" (which expression includes inam as per Art. 31-A(2)(a)(i)) cannot be challenged on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by Aritles 14, 19 and 31 of the Constitution. Article 31-A saves such laws providing for acquisition of estates etc., notwithstanding anything contained in Article 13(2). Therefore, when the law is upheld under Article 31-A its validity would stand independently of the question of its validity in context of Article 31 and the reasoning for holding that there was in fact no violation of Article 31 will have no bearing when the law is held to be covered under the umbrella of Article 31-A of the Constitution.

10.1 When the Act falls within the class of Statutes contemplated by Article 31-A(1)(a) of the Constitution it is protected from the attack on the ground that any of its provisions violates the fundamental rights conferred by Articles 14, 19 or 31 of the Constitution. This is borne out from the ratio of the decision of the Supreme Court in Jadab Singh and ors. Vs. Himachal Pradesh Administration reported in AIR 1960 SC 1008, in which the Supreme Court held that the validity of the Himachal Pradesh Abolition of Big Landed Estate and Land Reforms Act, 1954 being estate abolition law, its validity could not be challenged under Articles 19 and 31 of the Constitution in view of Article 31-A. The Supreme Court followed its earlier decision in Ram Ram Narain Vs.

State of Bombay reported in AIR 1959 SC 459, in which it was held that a statute, the object of which is to bring about agrarian reform by transferring the interest of the land owners to tenants, falls within the class of statutes contemplated by Art. 31-A (1)(a) and is protected from the attack that it violates the fundamental rights enshrined in Article 14, 19 and 31 of the Constitution.

10.2 The Supreme Court in Gangadhar Rao Vs. State of Bombay, reported in AIR 1961 SC 288, while dealing with the Constitutionality of the Bombay Personal Inams Abolition Act, 1953, held that Inams are estates within the meaning of the expression "estate" for the purpose of Article 31-A of the Constitution. It was held that the said Inam Abolition Act when it extinguished or modified the rights of inamdars in the inam estate was protected by Article 31-A. In paragraph 8 of the judgement, the Supreme Court held: "It is true that by sub-section (5) of Section 17, no compensation is to be paid for the loss to the inamdars of what he used to get because of the difference between the quit-rent and the full assessment. It is however clear that Article 31-A saves the Act from any attack under Article 31, which is the only Article providing for compensation. In this view of the matter, the constitutionality of the Act cannot be assailed on the ground that it provides for no compensation for extinction of certain rights".

10.3 In B. Shankar Rao Vs. State of Mysore, reported in AIR 1969 SC 453, the Constitution Bench of the Supreme Court in context of the provisions of Mysore (Personal and Misc.) Inams Abolition Act, held that the provisions thereof cannot be challenged on the ground of violation of Article 31(2) as the Act falls within protection of Article 31-A. In paragraph 6 of the judgement, the Court held: "The impugned statute, therefore, falls under the protection of Article 31-A of the Constitution and cannot be challenged on the ground that Article 31 has been violated, that no principle of compensation has been provided or that the compensation provided for is illusory or inadequate".

10.4 In K.W. Estates Vs. State of Madras, reported in AIR 1971 S.C 161, the Supreme Court while dealing with the provisions of the Madras Inam Estates (Abolition and Conversion into Ryotwari) Act, 1963 and the Madras Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963, held that these Acts were completely protected by Article 31-A from challenge on the ground that they violate

Articles 14, 19 and 31 of the Constitution. It was also held that the provisions of Article 26(c) and (d) do not take away the right of the State to acquire property belonging to religious denominations. Those denominations can own, acquire properties and administer them in accordance with law. That does not mean that the property owned by them cannot be acquired. As a result of acquisition they cease to own the property. Thereafter, their right to administer that property ceases because it is no longer their property. Article 26 does not interfere with the right of the State to acquire property as held in paragraph 12 of the judgement.

10.5 The Supreme Court negatived a challenge against the Constitutional validity of the Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973, in P. Mahendra Vs. State of Karnataka, reported in AIR 1990 S.C 404, holding that the Act being a legislation made for the purpose of bringing out agrarian reform, its provisions were protected by Article 31-A(1)(a) of the Constitution, notwithstanding the fact that some of these provisions contravened Articles 14 and 19 of the Constitution.

11. The Act of 1969 and the Amendment Act of 1979 were both included in the Ninth Schedule at Sr.Nos. 213 and 216 by the Constitution Sixtysixth Amendment of 1990 in the Constitution and therefore, as provided in Art. 31-B, without prejudice to the generality of the provisions of Article 31-A, none of these Acts, nor any of the provisions thereof shall be deemed to be void, or ever to have become void, on the ground of being inconsistent with or taking away or abridging any of the rights conferred by Part-III of the Constitution and they will continue in force notwithstanding any judgement, decree or order of any Court to the contrary. This protection of Article 31-B would preclude any challenge against the provisions of the said Act or the Amendment Act, on the ground of inconsistency with any of the fundamental rights except on the ground that basic feature of the Constitution is violated. Even a declaration that an Act is void on the ground of violation of the fundamental right made by the Court will cease to have effect and the Act included in the Ninth Schedule gets validity with retrospective operation from the date of its enactment. Article 31-B and the Ninth Schedule have the effect of curing the defect, if any, in the various Acts mentioned in the Schedule as regards any unconstitutionality alleged on the ground of infringement of fundamental rights and by the expressed words of

Article 31-B such curing of the defect took place with retrospective operation from the dates on which the Act was put on the statute book. Even if the Act was void or inoperative, at the time when it was enacted by reason of infringement of Article 31(2) of the Constitution, it would assume full force and vigour from the date of its enactment after its inclusion in the Ninth Schedule read with Article 31-B, as held by the Constitution Bench of the Supreme Court in L.Jagannath Vs. Authorised Officer, reported in AIR 1972 SC 425 at 435. There is therefore absolutely no substance in the contention raised on behalf of the petitioners that even after the inclusion of the said Act and the Amendment Act in the Ninth Schedule, the validity of the Act or the Amendment Act can be examined in context of any challenge on the ground of violation of any fundamental right.

11.1 In Shree P.C Mills Vs. Broach Municipality, reported in AIR 1970 192, the Supreme Court on the aspect of retrospective validation of the Act by the legislature has held that if the legislature has the power over the subject matter and competence to make a valid law, it can at any time make such a valid law and make it retrospectively, so as to bind even past transactions. The validity of a validating law, depends upon whether the legislature possesses the competence which it claims over the subject matter and whether in making the validation it removes the defects which the Court had found in the existing law and makes adequate provisions in the validating law.

12. We may also note that under Article 31-C of the Constitution, the laws giving effect to certain directive principles are saved notwithstanding anything contained in Article 13 and cannot be challenged on the ground of any inconsistency with the fundamental rights conferred by Article 14, 19 or 31. Reference to Article 31 came to be omitted from Articles 31-A and 31-C after it was omitted by the Fortyfourth Amendment and ceased to be a fundamental right. The provisions of the said Act and the Amendment Act are not only for securing agrarian reform but they give effect to the policy of the State towards securing the directive principles of the State policy under Article 39(b) and (c) of the Constitution, and therefore, they would be strengthening the basic features of the Constitution rather than violating them. It is a settled legal position that if any law fulfils the requirement of Article 31-C, it would be immune from any attack on the ground of contravention of Article 14, 19 or 31 of the Constitution. In State of Tamil Nadu Vs. L.Abu reported in AIR 1984 SC 326, the Supreme Court

while considering the challenge against the provisions of Tamil Nadu Stage Carriages and Contract Carriages (Acquisition) Act, held in paragraph 29 of the judgement: "In view of Article 31-C, which gives protective umbrella against Article 31(2) also, the Court cannot strike down the Act merely because the compensation for taking over the transport services or its unit was not provided for". In Minerva Mills Ltd. Vs. UOI reported in AIR 1986 SC 2031, it was held that as The Nationalisation Act came under the protective umbrella of Article 31-C, the petitioners were not entitled to challenge the Constitutional validity thereof on the ground of violation of Articles 14 and 19 of the Constitution.

13. The challenge against the provisions of Section 11 as amended in the final analysis boils down to the ground that by excluding inamdar from claiming compensation thereunder for his extinguished rights in respect of property covered under Section 8, the right to property of the denomination guaranteed by Article 26(c) is taken away and that it thereby affects the basic structure of the Constitution. This contention is wholly misconceived, because, right to property which is no more a fundamental right and is a Constitutional right under Article 300-A cannot be said to be a basic feature or structure of the Constitution.

13.1 As held by the Supreme Court in Jilubhai Nanbhai Khachar Vs. State of Gujarat, reported in AIR 1995 SC 142, right to property under Article 300-A is not a basic feature or structure of the Constitution and it is a constitutional right. The Act and the Amendment Act having had the protective umbrella of the Ninth Schedule, its invalidity is immune from attack. It was also held that Article 14 of the Constitution in the context of right to property is not a basic feature or a basic structure and the Constitution Sixtysixth Amendment Act, 1990 bringing the Bombay Land Revenue Code and Land Tenure Abolition Laws (Gujarat Amendment) Act (8 of 1982) under Ninth Schedule to the Constitution does not destroy the basic structure of the Constitution. In the said decision, while dealing with a contention based on Entry 42 of List-III of the Seventh Schedule to the Constitution, the Supreme Court held in paragraph 52 of its judgement: "Therefore, the Amendment to Entry 42 of List-III has little bearing on the validity of those principles. We are conscious that Parliament omitted Article 31(2) altogether. However, when the State exercises its power of eminent domain and acquires the property of private person or deprives him of his property for public purpose, concomitantly fixation of

the amount or its determination must be in accordance with such principles as laid therein and the amount given in such manner as may be specified in such a law. However, judicial interpretation should not be a tool to reinduct the doctrine of compensation as concomittance to acquisition or deprivation of property under Article 300-A". ..... "By necessary implication the obligation of the State to pay compensation for property acquired or indemnification of perperty deprived under Article 300A or other public purpose is obviated."

13.2 A Full Bench of the Kerala High Court in Elizebath Samuel Aaron Vs. State, reported in AIR 1991 (Kerala) 162, dealing with an argument about adequacy of compensation on the basis of Entry 42 of List-III and the right to property under Article 300-A of the Constitution, held that the purpose of various amendments made in the Constitution will stand defeated if it is held that Article 300A envisions payment of adequate compensation for the deprivation of property to the owner. Article 300-A does not sustain a challenge to any legislation on the ground of inadequacy or illusory nature of compensation. It was held that if the intention of the Parliament was that Article 31(2) either in its original or its amended form should find reflection even in the Constitutional right introduced by the Fortyfourth amendment, nothing prevented them from incorporating Article 300-A. On the other hand, what Parliament chose to do is only to transform Article 31(1) as Article 300-A and omit Article 31(2) in its entirity. It was also held that the fact that the legislation is one falling under Entry 42 of the Concurrent List for acquisition of property does not mean that it should provide for payment of compensation/amount, or that the absence of provision for adequate compensation will render it invalid under Article 300-A. The scope of a legislative Entry is only to delineate the extent of the legislative power, and not to enforce limitations which are otherwise not imposed by any of the other provisions of the Constitution. We respectfully share the reasoning of the Full Bench in the said decision.

13.3 A Full Bench of the Andhra Pradesh High Court in M. Venkatarao Vs. State, reported in AIR 1975 Andhra Pradesh 315 held in paragraph 100 of its judgement that right to property conferred by Articles 19 and 31 and the right of equality in its relation to right to property cannot form the basic structure or essential feature of the Constitution and are not outside the purview of the amending power of the Parliament.

13.4 The consistent view taken by the Supreme Court is that although the State cannot interfere with freedom of a person to profess practice and propagate his religion, the State, however, can control the secular matters connected with religion. All the activities in or connected with a temple are not religious activities. In Shree Jagannath Temple Puri Management Committee Vs. Chintamani, reported in AIR 1997 S.C 3839, the Supreme Court held in paragraph 47 of its judgement that if any law is passed for taking over the management of a temple, it cannot be struck down as violative of Article 25 or Article 26 of the Constitution.

14. In light of the above discussion we answer the questions formulated by the division bench while referring these petitions for decision by a larger bench as under:-

(a) The right of a religious denomination to own and acquire property guaranteed under Article 26(c) of the Constitution is not a part of the basic features or structure of the Constitution.

(b) (i) In view of the placement of the Gujarat Devasthan Inams Abolition Act, 1969 and the Gujarat Devasthan Inams Abolition (Amendment) Act, 1977 in the Ninth Schedule to the Constitution, these Acts are immune from any challenge on the ground that any provision thereof is inconsistent with or takes away or abridges any of the fundamental rights conferred by any provisions of Part-III of the Constitution.

(ii) In view of the protection given by Article 31B to the Acts placed in the Ninth Schedule the validity of the said Act cannot be challenged on the ground that it does not provide for compensation for abolition of certain rights.

(iii) The constitutional right to property under Article 300A is not a basic feature or structure of the Constitution and no right to claim compensation flows therefrom or from Entry 42 of the Concurrent List of the Seventh Schedule.

(c) (i) The provisions of the Gujarat Devasthan Inams Abolition Act, 1969 were not open

to any challenge on the ground of inconsistency with any of the fundamental rights guaranteed by Article 14, 19 or 31, in view of the said Act being protected under Article 31-A of the Constitution as held by the Supreme Court in Narendraprasadji Vs. State of Gujarat, reported in AIR 1974 S.C 2098. Moreover, the said Act was also protected against such challenge under Article 31-C of the Constitution. In any event, it cannot be challenged on the ground of inconsistency with any fundamental right guaranteed by Part-III of the Constitution, being placed in the Ninth Schedule.

(ii) Even assuming that the said Act was open to such challenge, we hold that Section 9 thereof provided for compensation for the extinguishment of all the rights of the Inamdar including the rights extinguished over properties enumerated in Section 8.

(d) The ratio of the decision of this Court in Narendraprasadji Vs. State of Gujarat, reported in 13 G.L.R. 404 to the extent it holds that the inamdar's claim for compensation for extinguishment of his right in specific Devasthan lands by reason of operation of Section 8, would fall within Section 11(1) and not within Section 9, which was not put in issue before the Supreme Court, is open to reconsideration by a larger bench and requires to be reconsidered. We hold that Section 9 is an omnibus provision for compensating all the extinguished rights of an inamdar in the Devasthan Inam including the rights extinguished in the property covered by Section 8. We also hold that in view of the protective umbrellas of Articles 31-A, 31-B and 31-C available to the said Act and the Amendment Act, the question about the quantum, method or manner of compensation for the rights extinguished under the Act becomes insignificant.

15. Thus, the challenge of the petitioners against the constitutional validity of the provisions of the said Act as well as the Amendment Act on the ground that they violate their fundamental rights under Articles 14, 19, 26(c) or 31 of the Constitution of India, miserably fails. The said Act as well as the Amendment Act stand

fully protected by each of the provisions contained in Articles 31-A, 31-B and 31-C of the Constitution and are immune from any challenge on the ground of inconsistency with any fundamental right. They do not violate any basic feature of the constitution. All these petitions are therefore rejected. Rule is discharged in each of them with no order as to costs.

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*/Mohandas